

UNITED STATE BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

William Atchison

Chapter 13  
Case No: 13-31999  
Honorable Daniel Opperman

Debtor

/

William Atchison,

Plaintiff,

Adv. Pro. No.:

v.

United States of America and  
State of Michigan

Defendants.

/

**COMPLAINT TO AVOID TAX LIENS**

Debtor, in support of his complaint states as follows:

1. Plaintiff brings this complaint pursuant to 11 U.S.C. §506, and submits himself to jurisdiction of this Court through Fed. R. Bankr. P §7001 and §7004.
2. Debtor filed a Voluntary Chapter 13 petition with this court on June 4, 2013.
3. The Debtor owns 4 parcels of land located at the following addresses:
  - a. 1402 Conway, Flint MI, 48532,
  - b. 4414 Lennon Rd., Flint, MI 48507,
  - c. 2311 Stonebridge Dr., Flint, MI 48532, and
  - d. 2351 Stonebridge Dr., Flint, MI 48532.
4. On each of the parcels listed above, there are federal tax liens recorded in 2009, 2010 and 2011 and 2012.

5. On each of the parcels listed above, there are state tax liens recorded in 2009, 2010 and 2013.

**COUNT I – 1402 CONWAY ST.**

6. Debtor has a mortgage and tax liens from the United States and the State of Michigan on his personal residence located at 1402 Conway, Flint MI, 48532.
7. The first mortgage is held by Fidelity National Title Insurance Company and has a balance of \$123,000.00 according to the Debtor's schedules which were based on a recent credit report balance.
8. The United States holds several liens subsequent to the interest of Fidelity, and in the total amount of approximately \$299,351.99 as evidenced by the Debtors schedules.
9. The State of Michigan holds several liens subsequent to the interest of the United States, and in the amount of approximately \$45,000.00 as evidenced by the Debtors schedules.
10. The property has a value of approximately \$16,000.00 according to a recent appraisal obtained by Debtor.
11. In order for the Defendants liens to be secured by even \$1.00, the property would have to be of value in excess of the first mortgage and any outstanding property taxes, which is no less than \$123,000.00.
12. The debtors are entitled to avoid the tax liens held by the United States and the State of Michigan under the provisions of 11 U.S.C. §506, as the Defendants liens are not “allowed secured claims” as defined by the Code and applicable case law.
13. As such, the Defendants do not have any valid liens on the property at 1402 Conway, Flint MI 48532 in Genesee County, and should therefore be treated as a general unsecured creditor whose claims will be paid as a Class 9 creditor.
14. The interest of good faith and justice support the requested relief.

WHEREFORE, Debtor request that this Honorable Court grant the requested relief to avoid all of the Defendants tax liens on the real estate located at 1402 Conway, Flint MI 48532 in Genesee County.

**COUNT II – 4414 LENNON RD.**

15. The Debtor has tax liens from the United States and the State of Michigan on his commercial property located at 4414 Lennon Rd., Flint MI, 48507 (the “Property”).
16. The United States holds the first tax lien against the Property for unpaid income taxes in the amount of approximately \$259,584.82 according to a recent title search.
17. The United States also holds several subsequent tax liens according to a recent title search, and in the amount of approximately \$39,767.17.
18. The State of Michigan also holds several subsequent tax liens according to a recent title search, and in the amount of approximately \$30,696.84.
19. The property has a value of approximately \$37,000.00 according to a recent appraisal obtained by Debtor.
20. In order for any junior tax liens to be secured by even \$1.00, the property would have to be of value in excess of the United States first mortgage and any outstanding property taxes, which is no less than \$259,584.82.
21. The debtors are entitled to avoid the tax liens held by the United States and the State of Michigan under the provisions of 11 U.S.C. §506, as the Defendants liens is not “allowed secured claims” as defined by the Code and applicable case law.
22. As such, the United States first tax lien is the only valid lien on the property at 4414 Lennon Rd., Flint MI, 48507 in Genesee County, and, in all other respects, the Defendants should be treated as a general unsecured creditors whose claims will be paid as a Class 9 creditor.
23. The interest of good faith and justice support the requested relief.

WHEREFORE, Debtor request that this Honorable Court grant the requested relief to avoid all tax liens on the real estate located at 4414 Conway, Flint MI 48532 in Genesee County except the United States first tax lien, which Debtor intends to cram down through his Chapter 13 Plan.

**COUNT III - 2311 STONEBRIDGE DR.**

24. The Debtor has tax liens from the United States and the State of Michigan on his commercial property located at 2311 Stonebridge Dr., Flint MI, 48532 (the “Property”).
25. The United States holds the first tax lien against the Property for unpaid income taxes in the amount of approximately \$259,584.82 according to a recent title search.
26. The United States also holds several subsequent tax liens according to a recent title search, and in the amount of approximately \$39,767.17.
27. The State of Michigan also holds several subsequent tax liens according to a recent title search, and in the amount of approximately \$30,696.84.
28. The property has a value of approximately \$32,164.00 according to a recent appraisal obtained by Debtor.
29. In order for any junior tax liens to be secured by even \$1.00, the property would have to be of value in excess of the United States first mortgage and any outstanding property taxes, which is no less than \$259,584.82.
30. The debtors are entitled to avoid the tax liens held by the United States and the State of Michigan under the provisions of 11 U.S.C. §506, as the Defendants liens is not “allowed secured claims” as defined by the Code and applicable case law.
31. As such, the United States first tax lien is the only valid lien on the property at 2311 Stonebridge Dr., Flint MI, 48532 in Genesee County, and, in all other respects, the Defendants should be treated as a general unsecured creditors whose claims will be paid as a Class 9 creditor.
32. The interest of good faith and justice support the requested relief.

WHEREFORE, Debtor request that this Honorable Court grant the requested relief to avoid all tax liens on the real estate located at 2311 Stonebridge Dr., Flint, MI 48532 in Genesee County except the United States first tax lien, which Debtor intends to cram down through his Chapter 13 Plan.

**COUNT IV - 2351 STONEBRIDGE DR.**

33. Debtor has a mortgage and tax liens from the United States and the State of Michigan on his commercial property located at 2351 Stonebridge Dr., Flint, MI 48532.
34. The first mortgage is held by Fidelity National Title Insurance Company and has a balance of \$123,429.12 according to the Debtor's schedules which were based on a recent credit report balance.
35. The United States holds several liens subsequent to the interest of Fidelity, and in the total amount of approximately \$299,351.99 as evidenced by the Debtors schedules.
36. The State of Michigan holds several liens subsequent to the interest of the United States, and in the amount of approximately \$45,000.00 as evidenced by the Debtors schedules.
37. The property has a value of approximately \$44,220.00 according to a recent appraisal obtained by Debtor.
38. In order for the Defendants liens to be secured by even \$1.00, the property would have to be of value in excess of the first mortgage and any outstanding property taxes, which is no less than \$123,000.00.
39. The debtors are entitled to avoid the tax liens held by the United States and the State of Michigan under the provisions of 11 U.S.C. §506, as the Defendants liens are not "allowed secured claims" as defined by the Code and applicable case law.

40. As such, the Defendants do not have any valid liens on the property at 2351 Stonebridge Dr., Flint, MI 48532 in Genesee County, and should therefore be treated as a general unsecured creditor whose claims will be paid as a Class 9 creditor.
41. The interest of good faith and justice support the requested relief.

WHEREFORE, Debtor request that this Honorable Court grant the requested relief to avoid all of the Defendants tax liens on the real estate located at 2351 Stonebridge Dr., Flint, MI 48532 in Genesee County.

Respectfully submitted,

Simen, Figura & Parker, PLC

/s/ Colin M. Linsenman

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